

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814  
(916) 322-6333



June 19, 1984

ALL-COUNTY INFORMATION NOTICE I-58-84

• TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: INDIAN CHILD WELFARE ACT (ICWA) STATEWIDE COMPLIANCE REVIEW

REFERENCE:

The purpose of this All-County Information Notice is to transmit findings of the Indian Child Welfare Act (ICWA) compliance review that was conducted statewide in June, July and August 1983.

The purpose of this review was to measure the extent of implementation by county welfare departments of foster care requirements contained in the ICWA. A review form was developed which captured information specific to each section of state regulations implementing the ICWA. The cases selected for review were all open foster care cases which had been entered into the Foster Care Information System (FCIS) with an ethnic code of 05 designating American Indian or Alaskan native. A total of 203 cases were reviewed.

The state staff review team read the case record for each of the 203 cases. Based on the documentation contained within the case folder, credit was either given or withheld for compliance with the specific regulation sections implementing the ICWA. The following findings reflect the statewide percentages of compliance with specific sections of the regulations.

Items of Compliance Review

1. In order to determine whether the requirements of the ICWA must be met, the child's status as an Indian must be confirmed. (MPP Division 30-109.3441.)

Child's Status as Indian

	<u>YES</u>	<u>NO</u>	<u>U</u>	<u>1/</u> <u>N/A</u>
a. child's birth certificate available	48.3%	49.3%	2.4%	0%
b. SOC 318 is completed and forwarded to the Secretary of Interior (BIA) <u>2/</u> for verification of tribal membership	31.0%	65.5%	3.5%	0%
d. Anonymity requested by child's parents	2.5%	82.2%	15.3%	0%
f. Child is tribal member	15.3%	12.8%	71.9%	0%
g. Eligible for tribal membership	26.6%	4.4%	69.9%	0%
h. BIA determination child not enrolled or eligible	3.0%	70.4%	0%	0% <u>3/</u>
2. It must be documented in the court order that active efforts were made to provide remedial services and rehabilitative programs to the family to prevent placement and that these efforts were unsuccessful prior to out-of-home placement. (MPP Division 30-109.3444).				

Documentation of Efforts to Prevent Family Breakup

	<u>YES</u>	<u>NO</u>	<u>U</u>	<u>N/A</u>
Evidence efforts made to provide services and rehabilitative programs designed to prevent family breakup	75.4%	10.3%	14.3%	0%
3. In a voluntary or involuntary placement of an Indian child there is a specific preference order of placement as follows:				
1) with a member of the child's extended family;				
2) in a foster home licensed, approved or specified by the child's tribe;				
3) in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or				
4) in an institution for children approved by an Indian tribe or operated by an Indian organization which has a suitable program.				
(MPP Division 30-336.2.)				

1/ Unable to determine from case documentation.

2/ Bureau of Indian Affairs (BIA).

3/ In the remaining 26.6 percent there was no indication that any attempt had been made to contact BIA.

Child's Placement Location County of Residence - 81.5% Out-of-County - 18.5%

a. Type of placement:

1. child's extended family	36.0%
2. foster home approved by tribe	2.0%
3. Indian foster home	6.0%
4. institution approved by tribe	0.0%
5. Emergency Shelter Care	1.0%
6. licensed family home	34.0%
7. certified family home pending licensure	.5%
8. licensed group home	11.8%
9. guardian	2.5%
10. unable to determine	2.2%
11. run away	4.0%

b. Continuation of placement made prior to March 7, 1979 - (effective date of California's ICWA regulations)

Yes 18.23% No 76.35% U 5.42%

4. If the identity or location of all interested parties cannot be determined, notice shall be given to the Secretary of the Interior who then has 15 days to provide such notice to all interested parties. Otherwise, the party seeking the foster care placement of, or termination of parental rights to an Indian child shall notify the parent or Indian custodian and the Indian child's tribe by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. (MPP Division 30-109.3442 and 30-109.3443)

Appropriate Notice

	<u>YES</u>	<u>NO</u>	<u>U</u>	<u>N/A</u> <sup>5/</sup>
a. Notice sent <sup>4/</sup>	14.3%	79.7%	3.0%	3.0%

<sup>4/</sup> In order for a case file to have rated a yes answer in question a., the notice must have been sent to the parents, the tribe and the Indian custodian if applicable. Sending the notice to some but not all of the appropriate parties rated a "No".

<sup>5/</sup> Reflects cases which had been in continuous placement prior to the ICWA effective date and the counties did not realize that the annual review process did bring them under the purview of the ICWA.

	<u>YES</u>	<u>NO</u>	<u>U</u>	<u>N/A</u>
b. Notice sent within 72 hours of filed petition and 10 days prior to hearing date	14.3%	78.8%	4.9%	2.0%
c. Notice sent to Secretary of Interior if identity or location of parents, tribe, custodian not determined	9.9%	82.2%	2.0	5.9%
d. Notice includes: child's name, birth date, birthplace, child's tribal affiliation; name of child's parents or custodian, copy of document initiating proceeding; and information regarding the right to intervene.	3.3%	84.2%	11.5%	1.0%

5. Certain conditions must be met when a child is considered for foster care or preadoptive placement, whether voluntary or involuntary. The setting must:

- be the least restrictive and most approximates a family
- meet the child's special needs, if any, and be within reasonable proximity to the child's own home, taking into account the child's special needs.

(MPP Division 30-336.1.)

Foster Placement Considerations

	<u>YES</u>	<u>NO</u>	<u>U</u>	<u>N/A</u>
a. Placement considers reasonable proximity	91.5%	3.0%	3.5%	2.0%
b. Placement considers special needs of child	91.1%	2.0%	4.9%	2.0%
c. Placement selected is least restrictive and most approximates a family	91.5%	3.5%	3.0%	2.0%
d. Placement preference order recommended and followed	44.8%	44.3%	7.4%	3.5%
(1) Court established good cause to contrary	2.0%	55.6%	5.0%	37.4%
(2) Child's tribe established different order of placement by resolution	0%	55.2%	5.9%	38.9%

6. No foster care placement may be ordered in such proceedings in the absence of a determination supported by clear and convincing evidence, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (MPP Division 30-109.3445.)

Use of Expert Witnesses

	<u>YES</u>	<u>NO</u>	<u>U</u>	<u>N/A</u>
Presentation to court by qualified expert witness, other than petitioning social worker	14.3%	65.0%	19.2%	1.5%

Summary

Three major problem areas were identified by the statewide compliance review of ICWA implementation:

1. Procedures for verification of children's Indian ancestry have not been fully implemented.

This is the critical first step in determining whether the requirements of the ICWA apply to a case. The social worker must:

- ask whether there is any possibility that the child may be of Indian ancestry. If so,
  - . obtain all available information from the child's parent(s), extended family or Indian custodian regarding the Indian ancestry of the child,
  - . obtain a certified copy of the child's birth certificate, and
  - . complete a SOC 318, Request for Confirmation of Child's Status as Indian, and submit this form along with a certified copy of the child's birth certificate to the Secretary of the Interior, Sacramento Area Office, Bureau of Indian Affairs, Federal Building, 2800 Cottage Way, Sacramento, California 95825, for confirmation of tribal enrollment/eligibility.

This process will result in a determination whether the child is Indian and requirements of the ICWA must be met.

2. Inadequate or Incomplete Notice of Pending Proceedings

This problem is directly related to the Indian child identification problems discussed in (1) above. If adequate determination of Indian ancestry and tribal affiliation has not been made, it is impossible to send correct notice of proceedings to all mandated recipients.

The ICWA requires that notice of the pending proceedings be given by registered mail, return receipt requested, to the Indian child's parent(s), Indian custodian and the child's tribe. This notice shall be made on a SOC 319 and shall be made within 72 hours of the date that the Dependency Petition was filed but shall be made no later than 10 days prior to the dispositional hearing date.

### 3. Low Use of Qualified Expert Witnesses

As can be seen from the compliance review report, very few cases used qualified expert witnesses in court.

### DSS Plan of Action

In response to the major problem areas identified during the ICWA implementation review, the following actions are planned to assist counties to come into full compliance with the ICWA.

1. Statewide Administrative Review - Beginning in March of this year, a statewide administrative review was begun on adult and children's services and adoptions programs. In relation to ICWA, the administrative review will focus on how CWD systems identify Indian children at intake. The reason for this emphasis in the administrative review is that results of the 1983 implementation review indicated major problems in this area.
2. Refresher training - county welfare casework staff will receive refresher training scheduled during Fall, 1984 on the requirements of the ICWA. This training will include provisions of the state implementation regulations for ICWA where the most serious compliance deficiencies were found.
3. Coordinate with BIA - DSS will immediately begin work with the BIA and counties to identify and correct problems that inhibit timely determination of a child's status as an Indian child as defined by the ICWA.

If you have any questions regarding this notice, please contact Ms. Karen Sharp at (916) 322-6333.

*Sharon Blakely*  
for LOREN D. SUTER

Deputy Director  
Adult and Family Services Division

cc: CWDA